

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/CA2004/001027

International filing date (day/month/year)
13.07.2004

Priority date (day/month/year)
16.07.2003

International Patent Classification (IPC) or both national classification and IPC
C12C11/00

Applicant
LABATT BREWING COMPANY LIMITED

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☒ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office
D-80298 Munich
Tel. +49 89 2399 - 0 Tx: 523656 epmu d
Fax: +49 89 2399 - 4465

Authorized Officer

Rinaldi, F

Telephone No. +49 89 2399-7360



**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**International application No.
PCT/CA2004/001027

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/CA2004/001027

Box No. II Priority

1. ☒ The following document has not been furnished:

☒ ~~copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a))~~

- ☐ translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	3-7
	No: Claims	1,2,8
Inventive step (IS)	Yes: Claims	
	No: Claims	1-8
Industrial applicability (IA)	Yes: Claims	1-8
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/CA2004/001027

Re Item V.

- 1 The following document is referred to in this communication:
- D1: DE 198 28 688 A (STEINECKER MASCHF ANTON) 29 July 1999 (1999-07-29)
- D2: DATABASE WPI Section Ch, Week 197509 Derwent Publications Ltd., London, GB; Class D16, AN 1975-15488W XP002303873 -& SU 423 839 A (SEVEROV B P) 3 September 1974 (1974-09-03)

Novelty

- 2 The subject matter of independent process claims 1 and 2 and of thereof depending claim 8 does not fulfill the requirements of Art.33(2) PCT. D1 discloses suppressing formation of foam in wort by closing valve 24 thus allowing CO₂ generated during the fermentation to build up a pressure above the wort such that the foam is squashed. The valve is kept closed until the foam is reduced i.e. decayed and then reopened. Working below the maximum pressure which the brewing vessels can handle is regarded to be implicitly disclosed. Repeating the above steps is implicitly disclosed as the control unit will repeat the cycles whenever necessary i.e. as desired (col 8:20-col 9:19). The process is disclosed in the context of a primary fermentation.

Inventive step

- 3 The subject-matter of independent method claims 1 and 2 and of the thereof depending claims 3-8 does not fulfil the requirements of Art.33(3) PCT.
- 3.1 In view of the disclosure of D1, the subject-matter presently claimed appears to be trivial. In particular, collecting CO₂ is usually implemented in brewery. Similarly, optimising the pressure in the vessel is considered to be merely a measure of routine rather than of inventive skills.
- 3.2 D2 discloses defoaming by aid of repeated cycles of applying pressure and decompression such that foam is reconverted to a liquid. What is not unambiguously disclosed in D2 is that the foam volume reaches a maximum and decays. This is not considered to provide any unexpected effects and it is seen as an obvious measure.

Re Item VII

Certain defects in the international application

- 1 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents D1-D2 is not mentioned in the description, nor are these documents identified therein.
- 2 The unit of the pressure "psig" (claims 2-5 and throughout the description) is not additionally expressed in terms of the metric system as stipulated by R.10.1a) PCT.

Re Item VIII

Certain observations on the international application

- 1 The pressure ranges disclosed in claims 2-5 are mostly below atmospheric pressure. It is unclear in as far such values can be defined as increased pressure (Art.6 PCT).